IN THE HIGH COURT OF BOMBAY AT GOA
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FIRST APPEAL NO. 33 OF 1999

1. Mr.Evorcio Sindulfo
   Visitacao da Conceicao
   Souza Eremita, married, and
   his wife,

2. Smt. Succorina Souza Eremita,
   major, housewife, both
   r/o Nio-Rico Apartments,
   Opp. St. Alex Convent,
   Calangute, Bardez, Goa. ... Appellants.

Versus

1. Mrs. Maria Conceicao Edilda
   de Souza Proenca, alias Maria
   Conceicao Edilda de Souza
   Eremita, major, landlady and

2. Mr. George de Souza Proenca,
   major, businessman, both r/o
   Porbavaddo, Calangute,
   Bardez, Goa. ... Respondents.

Mrs. A. A. Agni, advocate for the appellants.

Nr. Shivan Dessai, advocate for the respondents.

CORAM : B. H. MARLAPALLE, J.

DATE : 4th November, 2004.

ORAL JUDGMENT

This appeal arises from the decree passed by the learned IInd Additional Civil Judge, Senior Division, Mapusa on 30th November, 1998 in Special Civil Suit no.102/1993. By the said decree the plaintiff no.1 was declared to be the owner in possession of the property surveyed under no. 236/10 of village Calangute and the trial Court directed the name of the defendant no.1 to be deleted. In the place of defendant no.1 the name of

plaintiff no.1 was directed to be entered in the survey records of the suit property. Further order of permanent injunction came to be issued. Being aggrieved by this decree, the defendants have filed this appeal.

2. It was the case of the plaintiffs that the suit property known as "Bhatti" and bounded as under, is agricultural land located in village Calangute and it was originally an estate of Maria Zita Menezes and her husband late Jose Joaquim Poncanio da Conceicao Souza Eremita:-

EAST - By the paddy field of Comunidade of Calangute.

WEST - By the property of the heirs of Antonio Inacio D'Souza, Mathias D'Souza and ors.

NORTH - By the property of the heirs of Thomas Dias and ors.

SOUTH - By the property of the heirs of Piedade Sortorio Maartina and ors.

On the demise of Maria Zita Menezes, Jose Joaquim Conceicao Poncanio da Conceicao Souza Eremita had filed inventory proceedings registered under no.6 of 1968 in the court of the Civil Judge, Senior Division at Mapusa and the said proceedings were concluded on 7th January, 1972. The plaintiff no.1 is the sister of defendant no.1 and the plaintiff no.2 is the husband of plaintiff no.1, whereas defendant no.2 is the wife of defendant no.1. Maria Zita Menezes has the following heirs:-

(i) the plaintiff, Mrs. Maria Conceicao Edilda de Souza Proenca,

(ii) the defendant no.1, Evorecio Sindulfo Visitacao da Conceicao Souza Eremita,

(iii) Rosita Nifa da Conceicao Souza Eremita,

(iv) Maria Goretti Jennefer da Conceicao Souza Eremita;

(v) Ana Beatriz Piedade Abelina da Conceicao Souza Eremita and

(vi) Zito Ferdinando Piedade da Conceicao Souza Eremita.

In the inventory proceedings all the properties and estates of the deceased Maria Zita Menezes were partitioned and the suit property described as item no.3 in the said proceedings was allotted to the share of three sisters of Maria Zita Menezes in equal shares, i.e. Rosita Nifa da Conceicao Souza Eremita, Maria Goretti Jennifer da Conceicao Souza Eremita and Ana Beatriz Piedade Abelina da Conceicao Souza Eremita. The defendant no.1 was, on the other hand, allotted 1/3rd share in the property under item no.4 and half share in the property under item no.5 in the inventory proceedings. The property under item no.4 was known as "Gorbatt" whereas the property under item no.5 was known as "Aradi Varzea", both located at village Calangute. The plaintiff no.1 was not allotted any immoveable properties in the inventory proceedings as she was given dowry during her marriage.

3. It was contended by the plaintiff that Maria Goretti Jennefer da Conceicao Souza Eremita signed a gift deed on 25th October, 1975, which was registered with the office of the Sub-Registrar of Bardez under no.685/75 of Book no.I volume 96 pages 242 to 247, and as per the said gift deed 1/3rd of her share in the property under item no.3 of the inventory proceedings was gifted to the plaintiff no.1, as the plaintiffs had incurred all the expenditure required for the marriage of Maria. In addition, Ana Beatriz sold her 1/3rd share to plaintiff no.1 vide sale deed dated 11th January, 1978, which came to be registered on 15th March, 1978 and similarly, the remaining 1/3rd portion belonging to Rosita Nifa was also sold to plaintiff no.1 by sale deed 26th July, 1977, which was registered on 26th September, 1977. The plaintiff in turn by sale deed dated 14th February, 1978, sold and separated a plot admeasuring 1400 sq. mts. for a consideration of Rs.30,000/- from the suit property to Mr. John Victor Conceicao Sequeira and Mr. Ladislau Emeliano Sequeira and the said sale deed was registered on 12th April, 1978.

4. The cause for filing the suit arose on account that the defendant no.1 allegedly was successful in recording his name under survey promulgated in January, 1990. The suit was therefore filed for declaration of ownership, deletion of the name of the defendant no.1 from

the occupation column and for permanent injunction.

5. The defendants filed written statement. While denying almost all the contents of the plaint they stated in para 12 of the written statement as under:-

> " In fact the suit property which is surveyed under no.336/10 has always been surveyed in the name of the defendant no.1. Even the survey records prior to the promulgation disclosed the name of the defendant no.1 as owner and occupant of the property and the contentions made at para 12 by the plaintiffs are totally false and devoid of any substance. It is stated that the suit property which is presently surveyed under no.336/10 has always been enjoyed and possessed by the defendant no.1 as his own openly and continuously without any obstruction and interference from anyone whomsoever for a continuous period of more than 30 years."

6. The issues framed at Exh.8/A and the issues on limitation were answered against the defendants. The trial Court also rejected the contention of the defendants that the suit was undervalued. Further, it held that the defendants could not prove their title as owners of the suit property. The plaintiffs had examined in all four witnesses, i.e. P.W.1, George De Souza Proenca (defendant no.2), P.W.2, Namdev Nagvenkar, P.W.3, Vaikunth Gadekar and P.W.4, Shrikant Chodankar, whereas the defendants examined only one witness, i.e. the defendant no.2.

7. There is no dispute that the inventory proceedings concluded in January, 1970 and the defendant

no.1 did not get any share in the suit property i.e. item no.3 and the same property had gone to the share of the remaining three sisters of plaintiff no.1 with 1/3rd share each. The defendant no.1 was given part of the share under item no.4 and item no.5 of the inventory proceedings. When this position is not disputed, it was evident that the defendant no.1 had no title of ownership after the inventory proceedings were concluded in January, 1970. The plaintiff no.1 in support of her title to the property placed on record the gift deed at Exh.P.W.1/D and the other two sale deeds at Exh.P.W.1/E and P.W.1/F. Mrs. Agni, learned counsel appearing for the appellants, submitted that though these documents were duly exhibited, their contents were not proved and she cited a number of enunciations in support thereof. It must be noted that these documents on record were not brought as secondary evidence and as noted by the trial and as has come in the deposition of P.W.1, the original documents were placed before the trial Court and the true copies were compared with the original documents. The original documents were returned and the true copies were retained. Mr. Dessai, therefore, referred to the provisions of Section 91 of the Evidence Act. As per the said Section, when the terms of a contract or of a grant or any other disposition of property have been reduced to the form of a document and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in

proof of the terms of such contract, grant, or other disposition of property or of such matter, except the document itself. The trial Court was, therefore, right in holding that not only the documents, but even the contents of the documents were required to be taken into consideration and these documents proved the ownership of the plaintiff no.1. The other three witnesses, i.e P.Ws.2 to 4, have more or less deposed regarding the inventory proceedings and the survey certificate in form nos.I and XIV, marked at Exh.P.W.1/B. P.W.4, who was a carpenter had stated that the plaintiff no.1 used to lease the mango grove to him from the suit property for about 22 years and P.W.3 stated that he was plucking the coconut trees from the suit property for about 20 years, but alongwith Namdev Nagvenkar, P.W.2.

8. Once the plaintiffs had succeeded in proving their title on the basis of the gift deed and the sale deeds, the onus shifted on the defendant no.1 to prove his title of ownership on the basis of continuous possession as stated in the written statement. In fact, this plea taken by the defendant no.1 has been falsified by the evidence of defendant no.1, while in the witness box. In her examination-in-chief she stated:-

> "The deft. is my husband. The pltf. no.1 is the sister of my husband. I was married in the yr. 1978. The suit property is situated at Cobrawado and known as

> Bhatulem being survey no.336/10. The suit property originally belongs to D-1 and still in our possession. My husband was working on boarded ship and when he was the bachelor he had given power of attorney to manage his property to his brother in law the pltf. no.2, which was revoked in the yr. 1981."

The defendants did not furnish any explanation as to how the property remained in possession/occupation after the inventory proceedings were concluded in January, 1970 and there is absolutely no document on record to show that the defendants were shown to be in possession/occupation of the suit property from January 1970 to 1989. Under such circumstances, the plaintiff's claim that it was defendant no.1 who managed with the revenue authorities and got his name entered in the suit property in the column of possession/occupation finds support. The trial Court, therefore, rightly held that the plaintiff no.1 was the owner of the suit property and the entry of defendant no.1 was illegal.

9. However, Section 97 of the Goa Land Revenue Code, 1968, clearly stipulates that the revenue entries made in the record of rights are required to be corrected by the Mamlatdar/Talathi. It was, therefore, necessary for the trial Court to leave the issue of removing the name of the defendant no.1 from the possession/occupation column to the Talathi, on an application to be submitted by the plaintiff on the basis of a decree. To that extent the decree impugned needs to be corrected.

10. In the result, this Appeal succeeds partly and the declaration of ownership of the suit property in favour of plaintiff no.1 is hereby confirmed alongwith the order of permanent injunction. However, for deletion of the name of defendant no.1 from the column of possession/occupation, the plaintiffs may apply to the Talathi on the basis of the decree under Section 97 of the Goa Land Revenue Code, and it would be for the Talathi to pass appropriate order. No costs.

B. H. MARLAPALLE, J.

mc.